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August 26, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 21, 2005

Case Number: TSO-0202

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor (the DOE Contractor) and has possessed a DOE access authorization since 1986. In 2002, the DOE was informed that the individual had used his corporate credit card to hire an escort service, and proceeded to conduct a personnel security interview with the individual in January 2003 (the January 2003 PSI). The individual underwent a psychiatric evaluation in May 2003 and the DOE contractor received a report from its consulting psychiatrist (the DOE contractor's consulting psychiatrist) in June 2003. After reviewing this report, the DOE conducted a second PSI with the individual in July 2003 (the July 2003 PSI). The individual's DOE access authorization was suspended in mid-2004.

In November 2004, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. The Notification Letter indicates a security concern under Sections 710.8(1) of the regulations governing eligibility for access to classified material. Criterion (1) concerns information that an individual has engaged in unusual conduct or is subject to any circumstances

which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.

With respect to Criterion (1), the Notification Letter specifies derogatory information which may be summarized as follows:

A. The individual is considered potentially dangerous by the DOE contractor and could possibly seek retaliation against other contractor employees.

B. The individual has admitted that he used his corporate credit card numerous times in 2001 and 2002 for purchases not related to official travel, and has indicated that using his corporate card for personal use was an acceptable practice.

C. The individual provided a false statement to DOE contractor officials when he stated that he never used his corporate credit card for anything other than official travel expenses. He also initially denied to a DOE official that he used his corporate credit card to pay for an escort service.

D. The individual's corporate credit statements indicate that while on official travel in February 2002, the individual charged \$350.00 to a known escort service. The individual concealed this information from his wife, and, following a divorce, from his fiancée (now his wife). The individual admits to using an escort service on two other occasions.

Notification Letter Enclosure 2 at 1-2. 1/

1/ The Notification Letter also finds that individual's conduct in hiring an escort service is a Criterion (1) concern because it is contrary to specialized DOE training that individual received in connection with his professional duties. I do not believe that a DOE employee's professional training and duties create a different standard of conduct with respect to Criterion (1). All holders of DOE access authorization are required to avoid taking actions that may subject them to pressure, coercion, exploitation or duress and
(continued...)

The individual requested a hearing to respond to the security concerns raised in the Notification Letter. In a May 2005 response to the Notification Letter filed by the individual's counsel, the individual contended that no credible evidence exists to support the DOE's concern that he is "potentially dangerous and might seek retaliation." The individual admitted that he hired an escort "for the sole purpose of dinner companionship" while on business travel and paid for this service using his corporate credit card. However, he denied making any false statements to corporate officials and the DOE concerning his use of the corporate credit card for this purpose. He also denied that "the use of an escort for legitimate purposes" subjects him to any pressure, coercion, exploitation or duress which would cause him to act contrary to national security. Individual's Response to Notification Letter at 1-2. The hearing was convened in June 2005 (hereinafter the "Hearing"), and the testimony focused on the individual's efforts to demonstrate that he does not pose a potential danger to coworkers, has not made false or misleading statements to his employer and to DOE officials, and his use of escort services does not pose a security concern.

II. *REGULATORY STANDARD*

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b), (c) and (d).

A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect

1/(...continued)

may cause them to act contrary to the best interest of the national security.

national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review* (Case No. VSA-0087), 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing* (Case No. VSO-0061), 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review* (VSA-0061), 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing* (Case No. VSO-0038), 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

B. Basis for the Hearing Officer's Decision

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. HEARING TESTIMONY

At the Hearing, testimony was received from sixteen persons. The DOE counsel presented the testimony of the DOE Contractor's Designated Psychologist (the contractor's psychologist), the DOE's assistant manager for safeguards and security at the site where the individual is employed (the DOE assistant security manager), and the DOE Contractor's travel manager. The individual testified and presented the testimony of his wife, an employee who on the individual's staff who reported security concerns about the individual (the Reporting Employee), a female staff employee (the Staff Employee), the DOE Contractor's travel manager, the DOE Contractor's Labor Relations Manager, a friend/staff employee, the DOE's security team leader at the site, the individual's examining psychologist, the individual's examining psychiatrist, the DOE Contractor's former travel manager, the DOE's protective force security specialist, and a polygrapher who administered a lie

detector test to the individual (the individual's polygrapher).
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A. The DOE Contractor's Psychologist

The DOE contractor's psychologist testified that he meets with the contractor's employees and gives them psychological evaluations as part of the contractor's safety and security program. He testified that he has met with the individual at least annually since 1993. TR at 21-22.

The contractor's psychologist stated that in June 2003, he wrote a memorandum to the individual's supervisor in which he identified a potential security concern about the individual. TR at 30-36. He stated that in this memorandum, he referred to a report by the DOE contractor's consultant psychiatrist who evaluated the individual. While the DOE contractor's consultant psychiatrist concluded that she could not say with a reasonable degree of medical certainty that the individual had a diagnosable personality disorder, the DOE contractor's Psychologist concluded in his June 2003 memorandum that the individual met three of the seven categories for antisocial personality disorder set forth in the DSM-IV. These criteria involved deceitfulness, impulsivity and consistent irresponsibility. TR at 34-36.

The contractor's psychologist next testified concerning a July 2004 memorandum that he wrote to DOE Contractor's deputy general manager concerning the individual, and which is cited in the Notification Letter. See DOE Exhibit 3-1. In that memorandum he stated that the individual may be "potentially dangerous" because he meets a number of demographic and personality traits identified by Wackenhut Services in 1994 as predictors for potential workplace violence. He testified that he wrote the memorandum to give the deputy general manager information that would assist him in

2/ The testimony of the DOE contractor's psychologist, the individual's examining psychologist and the individual's examining psychiatrist indicates that they all have considerable professional experience in assessing personality disorders. TR at 216-218 and 301. See also, individual's examining psychiatrist's curriculum vitae, individual's exhibit 10. I conclude that they qualify as expert witnesses in this area. Similarly, the testimony of the individual's polygrapher that he is licensed with thirty years of experience in criminal issues lie detector testing convinces me that he qualifies as an expert witness in that area.

placing the individual at the DOE facility following the suspension of his access authorization by the DOE. TR at 41. He described his assessment of the individual as potentially dangerous as "an iffy thing" and described his concern as follows:

My concern at the time was that I knew that [the individual] was very angry. And I know when [another contractor official] and I talked with him, confronted him about the credit card thing, he was livid, although he held together, but I knew he was very angry, and I'm sure I would have been too, in the same position.

TR at 41-42. He also felt that the individual might become violent when faced with losing his job because "his whole being seemed to be tied up into [the individual's job title and duties]." TR at 43. However, the DOE contractor's psychologist then testified that he now believes that the passage of time has mitigated his concerns about the individual's potential for workplace violence. He stated that he met with the individual in September 2004 and that

he seemed pretty much comfortable with himself and moving on. So I don't think he's going to do anything at this point, but I wasn't sure then.

TR at 44.

His observations of the individual from September 2004 through the date of the Hearing also indicate that the individual has been able to deal with his anger in an appropriate way, and has not been in danger of acting out. TR at 76.

The DOE contractor's psychologist testified that at this time he "pretty much" agrees with the conclusion of DOE contractor's consultant psychiatrist in her 2003 report that it is speculative to diagnose the individual with a personality disorder based on the available evidence. TR at 36-37.

The contractor's psychologist stated that in December 2002, he met with the individual to discuss why the individual's corporate credit card account was not being paid in a timely manner. TR at 23. The contractor's psychologist testified that during this meeting, he asked the individual whether he used the corporate credit card to pay for personal rather than business expenses, and that the individual answered with an unequivocal no. TR at 25. He recorded this exchange in his contemporaneous notes of the meeting.

DOE Exhibit 2-3. After DOE contractor officials became aware of specific personal expenses charged on the individual's credit card, they met with the individual in January 2003. The contractor's psychologist, who attended this meeting, testified that the individual offered the following explanation for his use of the corporate credit card for personal expenses.

He stated that he had another credit card that looked similar to the company credit card, he may have inadvertently used it a few times. He claims that he did not think it was an issue, since he talked with [DOE Contractor's general manager] about using the card.

TR at 27. He stated that when the individual retracted his earlier denial and provided an explanation, he was inclined to simply accept it.

. . . I didn't really see it as that big a deal. I wasn't that comfortable with it, but . . . maybe he had forgotten, maybe he didn't realize it was on there, I don't know. So we cut him some slack on it. I wasn't going to make a big case out of it.

TR at 58.

B. The Individual's Examining Psychologist

The individual's examining psychologist testified that he examined the individual in June 2005. He specifically indicated that he did not agree with the July 2004 opinion of the DOE contractor's psychologist that the individual had an antisocial personality disorder. He stated that he agreed with the conclusion of the DOE contractor's consultant psychiatrist that the individual did not have a diagnosable personality disorder.

. . . for a personality disorder you have to have an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, and here's one of the keys, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. Personality traits are one thing, but only when personality traits are inflexible and maladaptive, and cause significant functional impairment or subjective distress do they constitute personality disorder.

TR at 221-222. The individual's examining psychologist found no indication of such significant functional impairment in the life history of the individual. TR at 222-224. With regard to potential violence, the individual's examining psychologist found nothing in the individual's personality assessments to indicate that he was at risk for acting out violently. He also noted that since December 2002, the individual has handled a very distressing workplace situation very well. TR at 230-231. He testified that from his experience and his review of the DOE consulting psychiatrist's report, the individual had been very candid in answering questions fully and truthfully. TR at 232-233.

C. The Individual's Examining Psychiatrist

The individual's examining psychiatrist testified that she saw the individual on two occasions for two hours each time in 2005. She stated that she also reviewed the MMPI-II that the individual completed in 2002 and the 2003 reports of the DOE contractor's consultant psychiatrist and the DOE contractor's psychologist. She concluded that

[The individual] does not have an Axis I primary psychiatric disorder, nor does he have an Axis II personality disorder. . . . He does not have a personality disorder that would diagnostically affect his reliability or judgment.

TR at 305. She stated that although his "general judgment was intact", his judgment in using a corporate credit card to indulge himself in an escort service/dinner engagement "I thought was sheer stupidity, to be very honest." TR at 305. She stated that the individual admitted to her that it was "a pretty bone head thing to do." *Id.*

The individual's examining psychiatrist stated that the individual's history revealed no instances of violence, speeding, or road rage that might identify him as potentially violent in the workplace. TR at 314-317. She stated that in her opinion, the individual's use of an escort solely as a dinner companion was consistent with his personality profile.

So I think this was a rather narcissistic, if you want to use that word, self-indulgence, to sit across the table from someone who he found attractive and intelligent, . . . of being seen with someone to inflate his ego,

compared to his wife he had at home who was very volatile and traumatic.

TR at 313.

D. The DOE Assistant Security Manager

The DOE assistant security manager at the facility where the individual is employed stated that he has worked with the individual and found him to be a very likeable and capable person. TR at 247. However, he indicated that the individual's actions and statements have raised several security concerns.

(1) Contractor Credit Card Use

The DOE assistant security manager testified that since at least 1999, it has been the policy of the contractors managing the DOE facility, that employees holding corporate credit cards may only use them for "business travel use." TR at 238-240. He stated that he had led the 2003 audit of corporate credit card use at the facility. He testified that with respect to the top management group at the facility, which included the individual, the audit revealed that eight of the fourteen people in that group had some misuse of the card. TR at 244-245.

The DOE assistant security manager stated that the individual has made conflicting statements concerning his personal use of the corporate credit card. He recalled that the individual told the DOE contractor's psychologist in December 2002 that he never used his corporate card for personal expenses. In a second interview with the Contractor's psychologist in January 2003, the individual stated that he may have used the corporate card inadvertently or mistakenly because it looked much like his personal card. However, the DOE assistant security manager testified that at his January 2003 interview with the individual,

As I asked him about his [corporate credit card] charges he indicated that he did it all the time and that it was an acceptable practice to use it for personal charges.

TR at 252.

The DOE assistant security manager stated that from the time that the current contractor management team arrived at the DOE facility in 2000 until the 2003 credit card audit, they appeared to ignore the restrictions for use of the corporate credit card. TR at 268.

He testified that following the January 2003 audit revealing personal use of corporate credit cards by contractor managers, the DOE conveyed its expectations concerning corporate credit card policies and corporate management at the DOE facility made a "commitment to change the way they were doing business." TR at 294.

He stated that the audit of the individual's corporate credit card revealed that the individual made more than fifty personal purchases on his card, including the February 2002 charge for an escort service. TR at 247-249.

(2) The Individual's Use of Escort Services

The DOE assistant security manager stated that in January 2003 he met with the individual and asked him about the escort service charge on his card.

[the individual] said he did not remember that. And I indicated to him that it was on February the 14th of 2002, and he said he didn't remember that. I said "Well, . . . this could be significant in that, you know, these types of services are typically related to prostitution." And [the individual] paused for a moment and said, "No, no, I didn't do that. That would be criminal, and I wouldn't do that."

TR at 250. He stated that the individual indicated that he had hired escorts from time to time while on travel, but that he did not remember this particular instance on February 14, 2002. TR at 252. Although he could not recall the incident, the individual denied any sexual contact with the escort. The DOE assistant security manager was not convinced by this denial.

. . . I do have a bill that indicates \$350 for something from a company that, as I said, are typically fronts for prostitution. One of the things that we did as we looked up the vendor codes for this is, we went to the internet and looked at this particular escort service on the internet and the phrase that stuck in my mind within all that was sex escort.

TR at 254. He stated that even if no prostitution was involved, there is a judgment issue involved in "having dinner with someone for \$350." He stated that such a situation puts the individual "in a position where he could be blackmailed or susceptible to

coercion." TR at 255. He stated that the individual was still married to his second wife at the time that he hired the escort.

That becomes an honesty issue again, and reliability of executing the responsibility, whether it's marriage responsibility or it's responsibility of a person's office.

TR at 257. He testified that when he and the individual discussed the escort issue in January 2003, the individual twice stated that his fiancée, now his wife, "can't find out about this."

I took that to mean that he was engaged, his fiancée would probably call off the wedding if she found out about it.

TR at 258-259.

With regard to the individual's assertion that he had not used the escort service for prostitution, the witness stated that he would not be convinced by polygraph evidence because of the individual's "understanding of the polygraph program, his expertise in this area. . . ." TR at 279. He stated that there are a number of techniques for avoiding discovery on a polygraph, and that a competent polygrapher is essential in spotting them. TR at 292-293. The DOE assistant security manager stated that the individual was offered an exculpatory polygraph on the escort issue to be administered by the DOE, but that he declined to take it. TR at 299.

E. The Individual

The individual testified that he has worked at the DOE facility for almost twenty years for two contractor employers, that he has been promoted to a management positions and was nominated for a national award by the DOE. TR at 355.

(1) Contractor Credit Card Use

The individual testified that December 2001 and in August 2002 he signed acknowledgments for "receipt and responsibilities" for his corporate credit card and that both of these acknowledgments stated that he agreed to use the card for business related travel expenses only. TR at 166-169 and DOE Exhibits 3-4 and 5-6. He stated that during this period he believed that it was "acceptable practice" to

use the corporate credit card for personal business. He stated that his opinion

was based on the fact that the [contractor travel manager] . . . told myself and other officers that it was just fine to use the corporate card for personal use as long as the bill was paid, and not only that, but a division manager had purchased a grand piano on his.

TR at 165.

The individual testified concerning his conflicting statements regarding his personal use of his corporate credit. The individual stated that in his December 2002 conversation with the contractor's psychologist, he was certain that he did not deny that he used the corporate card for personal use.

That wasn't my answer. I don't recall exactly [what I said], but there was absolutely no reason for me to have given that answer. It would have been completely illogical for me to do. I had already been interviewed by the deputy general manager about the problems with my credit card going through [my] divorce. There was absolutely no doubt that the statements were available to [the contractor] through that time, and could be referenced. You know, there was absolutely no reason to give that testimony, especially in light of the fact that I saw nothing wrong with using the card.

TR at 356.

The individual stated that in a January 2003 meeting with the contractor managers he stated to them that

some of those [credit card charges] could be business, some of those could be just that I inadvertently used the corporate card instead of my personal card. I said I wasn't going to talk to that until I actually saw the receipts and statements.

TR at 357. The individual stated that in his all of his responses to questions by corporate managers about his use of his corporate credit card in 2002 and 2003, he thought that he had conveyed his belief that managers were permitted to use the card for personal expenses. TR at 396.

The individual testified that after the discussions in early 2003 about the proper use of the corporate credit card, he has not used his corporate credit card for any personal expenses. TR at 381.

(2) Use of Escort Services

The individual testified that he used an escort service on February 14 2002 [Valentine's Day] but that he had no sexual relations of any kind with the escort. TR at 160-161. He testified that in January 2003, when the DOE assistant security manager asked him whether he charged this escort service bill on his corporate credit card, he stated that he did not recall that particular instance but that he did not dispute the accuracy of the bill. TR at 163-164.

The individual stated that he did not see his use of the escort service as raising a security problem. He said that in order for someone to be targeted by a foreign government through an escort service during a business trip to Washington, DC, that government would have to know that their target was visiting Washington, know where he was staying, and know that he had a pattern of calling escort services. TR at 164. He stated that he made no effort to investigate the escort service that he used, that he picked it out of the phone book. He stated that he was not "approached" by the escort that he hired for any intelligence purposes. TR at 164.

The individual stated that he did not recall any particulars of his dinner with the escort on February 14, 2002.

Hearing Officer: So you just don't recall anything about this incident?

Individual: Not really. I've tried and tried to think about this. You know, I've eaten dinner with a lot of people through my career. There is no way for me to go back and try to figure out which one this was.

Hearing Officer: What I find difficult is that this was a very isolated incident of hiring someone, an attractive lady to have dinner with and make conversation. So, I would have thought you'd recall something more of it?

Individual: I guess she wasn't that attractive, sir. I don't.

Hearing Officer: Did you feel disappointed?

Individual: I really don't recall that either.

Hearing Officer: And did you feel upset by the bill when it was tendered?

Individual: No, sir, that was agreed on by me, I'm sure, when I paid the service.

TR at 379-380. When asked to explain why there were no charges for restaurant meals on his credit card records, the individual stated that normally he has dinner at the hotel and charges it to his room. He said that the hotel bill of \$845 for that visit to the DC area "will include, I would say, multiple dinners." TR at 386.

The individual stated that he had used an escort service on three occasions in his life. The two other incidents occurred in the early or mid 1990's. One use involved a bachelor party for a co-worker and the other was for personal use. TR at 378.

The individual testified that he would not use an escort service in the future, and that, looking back, he believed that using an escort service was a "bone-headed move" because of "the way other people would perceive me because of it." TR at 358-359. He stated that at the time he made that decision, he thought that calling an escort service for an "articulate" dinner companion was less of a security risk than trying to meet someone in a bar.

He said that the DOE assistant security manager had not been accurate in testifying that the individual had been personally concerned in 2003 that his fiancée would learn of his use of an escort service. TR at 359. The individual stated that he expressed this concern to the assistant security manager because he thought that if his fiancée learned that this allegation was being pursued by certain contractor officials, it "could put her more into conflict with them". TR at 360.

The individual testified that he was offered an exculpatory polygraph by the DOE, and that he declined to take it. TR at 366.

When [the DOE security specialist] talked to me, she would not give the subject of the polygraph. Additionally, she told me that I needed to plan for being there all day. I've taken some . . . polygraphs before, there would have been absolutely no reason to have been there all day for that type of polygraph. . . . I did not think with my health condition, I could be okay

strapped to a chair all day. And then without knowing what the polygraph was going to be, I could have been walking into a background polygraph, and that's not right. That's not even legal. So there was no way without knowing what was going on for me to actually be okay with taking that test.

TR at 374.

F. The Individual's Wife

The individual's wife testified that she has worked for the DOE contractor for five years, has known the individual for about four years, and has been married to him for two years. TR at 94-97. She describes her husband as "the most honest individual I've ever come in contact with." TR at 97. She testified that "he is a man of character, an honest man, he takes care of his children, [and] he has never backed away from his responsibilities." She added that the individual always followed the proper procedures in the workplace.

. . . outside of work you could have fun, you could go and do things, but when you were at work, if it involved rules or laws, [the individual] wouldn't deviate from that.

TR at 98. She stated that the individual is "a very private person" and "not one to rehash" the past. Nevertheless, she asserted that "if I point blank ask [the individual] a question, whether he believes it to be my business or not, he will and has told me the truth." TR at 99-100. She does not believe that the individual is capable of being blackmailed or otherwise betraying the government, because of his truthfulness and his patriotism. TR at 100-101. She testified that the individual is not impulsive, that she has never seen him drunk, and that she believes that he will never again use an escort service. TR at 102-103.

She denied that her husband named prairie dogs after managers and co-workers before shooting them with his rifle. She said that rumor had started when, while at lunch with co-workers, she had related that she had told the individual that one of the prairie dogs they were hunting looked like a DOE contractor manager because "it has a large lower belly, and hair that's slicked back."

[the individual] never named one, never got one in his sights and named and shot it. It was totally blown out of proportion. That was not the way that happened.

TR at 105.

The individual's wife testified that "the accepted way of the plant" in 2002 was to disregard the restrictions concerning the use of the corporate credit cards. She stated that using the corporate credit card for personal business was accepted practice by corporate employees at that time. TR at 108-112.

She stated that she became engaged to the individual in December 2002 and became aware that the individual had used an escort in June or July 2003. TR at 114. She said that she did not believe that the individual would use an escort service again, but that if he did hire an escort as a dinner companion while traveling, she would have a problem with it. TR at 116-117.

In recalling the conversation that she had with the individual about his use of an escort on February 14, 2002, she testified that he was upset that DOE security assumed that the escort was more than a dinner companion.

. . . there were being implications that he had had sexual relations or done something illegal, that was my take on it, whether that's what he was trying to say to me. But I could tell that really bothered him that it would be seen as anything other than just someone to have dinner with.

TR at 119.

G. The Reporting Employee

The reporting employee stated that the individual had been his supervisor from early 2000 until the individual's security clearance was suspended in mid 2004. He testified that in July 2004, he was asked by the DOE contractor's deputy general manager to write a memorandum concerning some of the individual's behaviors and activities that made him uncomfortable. TR at 120-121. In that memorandum the reporting employee wrote that the individual "seems to be paranoid at times and exhibits a victim mentality." He reported that the individual seems to have a personal vendetta against those who are involved in the contractor's human reliability program and that he heard the individual state that he

wants their heads "on a spit". July 2004 Memorandum entitled "Documentation of Conversation", DOE Exhibit 3-1. He also wrote that he had witnessed the individual possessing a handgun inside the security fence, and that the individual and his wife named prairie dogs after contractor managers before shooting them with their rifles. *Id.*

At the Hearing, the reporting employee testified that he had made no conclusions over whether the individual intended to cause harm to other employees.

I had a responsibility to report behavior that I thought was a safety or security concern. And I didn't make a judgment whether or not [the individual] would have made harm to them. I reported it to . . . a supervisor at the facility, and he used his professional opinion to make whatever judgments needed to be made.

TR at 122. With respect to his report of seeing the individual with a handgun in the facility's parking lot, he testified that the incident occurred near Christmas, when he witnessed the individual deliver what looked like a gun box to the individual's friend/employee. TR at 123. He also stated that the individual had told him that "it was . . . his wife that actually named the prairie dogs." TR at 124. He could not recall the details of what the individual told him, but he testified that the naming of prairie dogs "may only have occurred once." TR at 152.

Finally, the reporting employee testified that he had observed the individual collecting evidence against the DOE contractor because of personal interests that he was pursuing and that this raised an ethical issue:

I think [the individual] is an honest person. I've never felt that he lied to me directly. It's just the ethical issues with - his duties as [a contractor employee], I think he had other interests that may not have been in the interest of the . . . department directly. They were personal interests that I think were questionable. In my mind I questioned his ethics on those decisions, those things that he was doing.

TR at 146.

H. The Staff Employee

The staff employee testified that she has known the individual for four and a half years. She stated that in her opinion, the individual is not a danger to others. She described him as a loyal and protective friend, and that she considers him to be a confidant. TR at 156-157. She testified that he is very patriotic and takes his job seriously. TR at 157.

I. The Contractor's Travel Manager

The Contractor's travel manager testified that she has held that position since 2001 and has administered corporate credit card issues since that time. TR at 174-175. She stated that she could recall no conversation with the individual in which she told him that it was acceptable to use the corporate credit card for personal use. TR at 176-177. She stated that the policy for the use of the card has been "for business use only" during the whole time that she has been travel manager. TR at 177. She said that she could recall no instance in which a Contractor manager used the corporate credit card to purchase a piano. She testified that in January or February 2003, following a DOE audit of corporate credit card use, her office instituted procedures for issuing warnings and notifying managers when employees used the corporate card for personal business. TR at 180-181. Prior to the DOE audit, "we didn't really monitor or track" credit card use unless they were notified by the credit card company that an employee had an overdue balance. TR at 177.

J. The Contractor's Labor Relations Manager

The labor relations manager testified that he was knowledgeable concerning the Contractor's corporate credit card policies. He stated that the policy had always been that the use of the card was restricted to official travel and business use only, and the he was not aware of any decision by the Contractor's management to broaden the use of the card. TR at 183-187.

K. The Friend/Staff Employee

The individual's friend/staff employee testified that he has known the individual since he came to work at the DOE facility thirteen years ago, and that the individual was his supervisor from July 1999 until mid-2004. TR at 188-190. He stated that he believes that the individual is "a very honest man" in both his personal and in his professional life.

The friend/staff employee stated that in 2003 the individual had given him an empty gun box in the parking lot of the DOE facility. He said that the individual had given him a weapon about a year earlier and that the individual gave him the empty gun box to keep the weapon safe from his children. TR at 200. He did not recall the individual ever mention that he or his wife had named a targeted prairie dog after a contractor manager. TR at 201.

With regard to corporate credit card use, he stated that he remembered the contractor's travel manager stating that there would be no problem using the corporate card for any expenses as long as the bill was paid on time. He also recalled that she referred to a corporate manager purchasing a baby grand piano using his corporate card. TR at 197-198.

He stated that the individual told him that he had used an escort service in February 2002 solely for dinner companionship and that he believed the individual. TR at 192-193. He testified that the individual would not intentionally violate a rule or law, and that he is too patriotic to be subject to foreign influence. TR at 194-196.

L. The DOE's Security Team Leader

The DOE's security team leader testified that he has worked with the individual since 1993 and believes that he is a conscientious employee. TR at 204. He also characterized the individual as honest, reliable and trustworthy. TR at 206.

He stated that if the individual were intentionally disregarding official policy concerning the use of his corporate credit card, that would raise an issue concerning the individual's reliability and trustworthiness. TR at 214.

He stated his opinion that if the individual hired an escort solely as a dinner companion, that would not make the individual more susceptible to coercion. TR at 206. He stated that a security concern would arise if the individual charged the expense on his corporate credit card or if he intentionally lied about making personal use of his corporate credit card. TR at 210. He stated that if the individual concealed the use of a dinner escort from his wife or fiancée, then there would be a potential for coercion security concern. TR at 212.

M. The DOE Contractor's Psychologist's Second Appearance

After hearing the testimony of the witnesses described above, the contractor's psychologist was asked to comment concerning what he had heard. He stated that he no longer viewed the individual as potentially violent. He said he based his revised view on the individual's behavior since June 2003 and concluded that "he has handled the stress and everything very well, from all indications." TR at 320. He also stated that the individual does not have a diagnosable personality disorder at the present time. TR at 321.

The contractor's psychologist stated that some of the testimony he had heard continued to raise a concern about the individual's honesty. He said that the contractor's travel manager denied the individual's assertion that there was no issue over using the corporate credit card for private purchases and that one manager had bought a piano with his credit card. TR at 322. He also stated that he was surprised by the testimony of the DOE's assistant security manager that the individual had made more than fifty personal charges on his corporate credit card. TR at 325.

N. The Contractor's Former Travel Manager

The contractor's former travel manager testified that around January 2001, the DOE contractor directed him to stop auditing the corporate credit card for personal use:

We did a frequent audit on the travel card up until the time that [the current contractor] took over. After the time that [the current contractor] took it over, the policy was that we weren't to question it because they had to have their personal credit reviewed, and they could use [the corporate credit card] as long as they paid the bill.

TR at 392. He also recalled that in 2003, following a DOE audit of corporate card use, corporate officials agreed to abide by the official policy of no personal use of the corporate credit card. TR at 393-394.

O. The DOE Protective Force Security Specialist

The DOE protective force security specialist testified that he has known the individual since 1987 and that they have worked together frequently in connection with some of his contractor oversight responsibilities. He stated that he has had no bad experiences

with the individual and that the individual has been "honest and straightforward" in all their dealings. TR at 399. He was not aware of the DOE's security concerns about the individual, but stated that the allegations that the individual had made false statements, misused his corporate credit card, and hired an escort could raise questions about his judgment, reliability and trustworthiness. TR at 403-406. He stated that if the individual was told by corporate management that it was acceptable to use the corporate credit card for personal expenses, he would not see such use as raising issues of honesty and trustworthiness. TR at 411.

P. The Individual's Polygrapher

The individual's polygrapher stated that the individual truthfully answered the questions that were posed to him. TR at 416. In those answers, the individual denied that he had "sexual relations with an 'escort service' girl in the Washington D.C. area" in February 2002. Hearing Exhibit 13. The individual's polygrapher stated that based on his twenty-five years of experience in conducting polygraph tests for the local police department, he believed that the individual did not try to deceive him.

I think that generally speaking, the measures that people take to avoid detection, whether or not they're truthful or telling a lie, generally aren't successful with a competent, experienced examiner. And I didn't see anything that would indicate to me that [the individual] was attempting any sort of deception or psychological games with me or anything of that sort.

TR at 417. He stated that the polygraph technique that he uses is known as the Modified Keeler technique, and that it is different from the Baxter Zone Comparison technique used by the DOE. He stated that both were effective techniques. TR at 421.

The individual's polygrapher testified that during his pretest interview, the individual was able to provide some details about his encounter with the escort.

And I could not have tested him if he weren't willing to take a stand on what he remembered and what he didn't remember. And my recollection of the pretest interview, he provided sufficient detail where I could formulate the questions that you see attached to my report. I mean, you can't answer a question yes or no and know that [whether] you're telling the truth or you're lying if you

don't recall enough detail to answer those specific questions.

TR at 425.

IV. ANALYSIS

Through his counsel and in his testimony at the Hearing, the individual presented four arguments for the purpose of mitigating the security concern. The first is an assertion that he has never done anything to indicate that he poses a potential physical threat to other employees at the DOE facility. The second contention is that he admits using his corporate credit card for personal expenses, but contends that before making these charges he had a reasonable belief that it was acceptable to use the corporate credit card for personal expenses as long as he paid his monthly bills. He further states that he has not used his corporate card to pay personal expenses since early 2003. The third contention is that he has not made false or conflicting statements about the use of his corporate credit card to contractor or DOE officials. Finally, he contends that his hiring of an escort on February 14, 2002 was an act of poor judgment that he will not repeat, and that the escort was hired solely as a dinner companion and that no sexual activity took place. For the reasons stated below, I conclude that the arguments and evidence presented by the individual do not fully resolve the security concerns.

A. Concerns that the Individual Posed a Physical Threat to Others at the DOE Site

In his Response to the Notification Letter and through Hearing testimony, the individual contends that no credible evidence exists to support the DOE's concern that the individual is "potentially dangerous and might seek retaliation." The individual presented the testimony of his wife, the reporting employee and the friend/staff employee to show that the individual had not displayed significant anger or threatening behavior in response to recent job-related pressures. He also presented the testimony of a psychologist and psychiatrist who testified that the individual did not possess a personality disorder and that his history indicated that he could handle stressful and conflict-laden situations without resorting to violence. After hearing this testimony, the DOE contractor's psychologist stated that he no longer viewed the individual as potentially violent, and believes that he does not

have a diagnosable personality disorder at this time. 3/ Accordingly, I find that the individual has resolved the DOE concerns that he is potentially violent in the workplace.

B. The Individual's Use of His Corporate Credit Card

The DOE counsel contends that the individual's personal use of his corporate credit card in 2001 and 2002 raises a security concern because it violated the express terms under which his card was issued to him. He refers to the acknowledgments that he signed in 2001 and 2002, and to the testimony by the travel manager and the contractor's psychologist that it has always been the official policy of the contractor that the corporate credit card should only be used for business expenses. At the Hearing, the individual testified that in 2001 and 2002, when he was placing personal charges on the card, he believed that the contractor's senior management had sanctioned personal use of the card by contractor managers. He stated that the contractor travel manager told him this, and the friend/staff employee also testified that he heard the contractor travel manager say this. The contractor travel manager cannot recall such a conversation.

4/

There is conflicting evidence concerning whether contractor management sanctioned personal use of its corporate credit card in 2001 and 2002. The contractor's former travel manager testified that around January 2001 he was instructed by corporate management to stop auditing the credit card for personal use and not to question expenses as long as credit card holders paid their bill. The contractor's labor relations manager stated that he was not aware of any decision by contractor management to broaden the use of the card. Finally, the DOE assistant security manager testified that when the DOE audited corporate credit card use in January 2003, eight of the fourteen senior corporate managers had used their card to pay non-business related expenses and as a result of

3/ The DOE counsel also indicated his agreement that the individual has shown that he does not have a personality disorder that makes him a potential physical threat in the workplace. TR at 435.

4/ Based on this testimony and on the testimony of the contractor's former travel manager, I believe that the individual and the friend/staff employee did receive assurances from the travel manager about personal use of the corporate card that she cannot now recall.

this audit corporate management made a commitment to change the way they were doing business. I find that there was a very relaxed attitude by the DOE contractor regarding use of the corporate credit card from 2001 until early 2003. Therefore, I find that the individual's failure to limit his own use of the card to business related travel expenses does not raise a serious issue concerning his honesty, reliability and trustworthiness. Furthermore, the individual testified that when his personal use of the card became an issue in late 2002 and early 2003, he stopped using it for non-business expenses, and has not misused the card since that time. Under these circumstances, I find that the individual has mitigated the security concern arising from his personal use of the corporate credit card in 2001 and 2002.

C. The Individual's Alleged False or Misleading Statements Concerning his Corporate Credit Card and Escort Service Use

The contractor's psychologist testified that in December 2002, when he asked the individual if he had used his corporate card for non-business expenses, the individual replied "no." The contractor's psychologist's contemporaneous notes from the meeting confirm that made this response. The individual denies that he gave this answer to the contractor's psychologist, stating that at that time he had already met with contractor officials concerning the debts that he had incurred on his corporate credit card, and that he would have no reason to make a false statement.

While there may have been some miscommunication or misunderstanding between the individual and the contractor's psychologist concerning this exchange, I find that the individual's response to the contractor's psychologist's inquiry about his personal use of the corporate card was at best misleading, and may have involved deliberate falsification. While the individual's answer of "no" would have been technically accurate if the contractor's psychologist posed his question in the present tense and the individual already had stopped using the corporate card for personal expenses, it still misled the contractor's psychologist into writing that the individual had never made personal use of his corporate card. The individual was aware when he answered this question that the contractor's psychologist was charged with assessing his fitness to hold a position at the DOE facility involving national security matters.

Similarly, the individual's initial inability to recall using an escort service when asked about it by the DOE assistant security manager raises the concern that he was being deliberately evasive

regarding an issue relevant to his fitness for access authorization. As discussed further in Section D below, evasive or misleading statements in the context of national security matters raise a Criterion (1) concern.

However, I do not find that the record supports the allegation that the individual made additional false or misleading statements about his use of the corporate credit card. In the individual's second interview with the contractor's psychologist in January 2003, the contemporaneous notes of the contractor's psychologist reflect that the individual stated both that he may have mistakenly used the card, and that he did not think that personal use of the card was an issue because he had spoken to the contractor's deputy general manager about it. DOE Exhibit 2-3. This conforms with his contemporaneous statement to the DOE's assistant security manager that he believed that it was an acceptable practice to use the corporate credit card for personal charges.

D. The Individual's Use of an Escort on February 14, 2002

I agree with DOE Security's finding that the individual's use of an escort service on February 14, 2002 raises a Criterion (1) security concern. As the DOE's assistant security manager testified, the individual's use of an escort may have involved illegal activity, i.e., prostitution. Even if no prostitution was involved, using an escort for companionship places the individual, who was married at the time, in a situation where he is susceptible to coercion.

The individual contends that he has resolved these security concerns by submitting polygraph evidence to establish that no act of prostitution took place with the escort. As evidence that he is not susceptible to coercion concerning this incident, he provided the testimony of his wife who testified that the individual informed her of the incident in the summer of 2003. Finally, he has testified that his use of an escort, even for non-sexual companionship, was an act of poor judgment on his part that he will not repeat.

The individual has not mitigated the security concerns arising from his hiring an escort on February 14, 2002. I am convinced by the testimony of the individual's polygrapher that the individual's 2002 encounter with an escort did not involve prostitution. However, I also am convinced that the individual has not been candid with DOE Security in responding to questions about this incident. At his January 2003 meeting with the DOE assistant security manager, the individual could not remember using an escort

service in February 2002, but he did not dispute the accuracy of the charge for the escort service that appeared on the billing statement for his corporate credit card. At his January 2003 PSI, the individual stated that he is certain that he hired an escort during a trip to the Washington DC area on February 14, 2002 but that he recalled nothing about the encounter. He stated only that his dinner with the escort "would've been at the hotel" and that there was no sexual activity involved. January 2003 PSI Transcript at 147 and 152. He provided no additional information concerning his inability to recall the incident at his July 2003 PSI. July 2003 PSI Transcript at 78-79. As summarized above, at the Hearing the individual continued to maintain that he could recall no specific information about this encounter with the escort. At the close of the Hearing, the individual's counsel asserted that the individual has been consistent with the DOE in taking the position that he cannot recall the incident, even though that position may sound "unbelievable" and "in light of logic, just doesn't make sense." TR at 439.

At the outset of the Hearing, I emphasized that the individual must provide complete information to resolve the concerns raised in the Notification Letter.

When [the individual] presents himself as a witness, it is in his best interest to answer questions fully and truthfully. An affirmative finding regarding eligibility for access authorization is possible only for individuals who cooperate by providing full, frank, and truthful answers to the DOE's relevant and material questions.

TR at 14. I do not accept the individual's repeated assertions that he cannot recall any specifics about his February 14, 2002 use of an escort service. The individual has testified that he used an escort privately on two occasions, once in the early 1990's and again in 2002. Under these circumstances, the individual certainly should remember the 2002 incident. In addition, his lack of recollection seems selective. He stated with certainty at the Hearing that the incident was limited to dinner companionship and that no prostitution took place, and yet he also stated that he could not recall any circumstances about his dinner with the escort. The testimony of his polygrapher also suggests that the individual has not been candid with the DOE about his recollection of his dinner with the escort. The polygrapher testified that when he discussed the incident with the individual prior to administering the polygraph test, he believed that the individual recalled the incident sufficiently to make a sworn statement that

no sexual encounter took place. I therefore do not accept the individual's assertions that he cannot provide the DOE with any details concerning this incident.

While I recognize that providing information about hiring an personal escort may deeply offend the individual's sense of personal privacy, anyone seeking access authorization must be willing to respond to such questions in a candid and truthful manner. The limited or selective disclosure of information regarding a security concern cannot mitigate that concern. Indeed, the inability to be candid about his private life in this area indicates that the individual may not have been candid with the DOE in describing other events in his private life that may be embarrassing to him. Under these circumstances, I conclude that because the individual has not been candid in describing his February 2002 meeting with an escort, he has not mitigated the security concerns arising from that incident. See *Personnel Security Review (Case No. VSA-0038)*, 28 DOE ¶ 83,018 at 86,523 (2001) (The OHA Director concluded that an individual raised a security concern when he failed to disclose to the DOE the circumstances that resulted in a positive drug test. "Whether silence was the most natural reaction in this case is irrelevant. The key here is that a person seeking a security clearance is under a continuing obligation to be completely honest and open with the DOE, and to keep the DOE fully informed with regard to matters that bear on his access authorization.").

V. CONCLUSION

For the reasons set forth above, I find that the DOE properly invoked Criterion (1) in suspending the individual's access authorization. After considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I find that the evidence and arguments advanced by the individual do not convince me that he has mitigated all of the DOE's security concerns. The individual has mitigated the concern that he may be potentially violent in the workplace and the concern arising from the misuse of his corporate credit card in 2001 and 2002. However, he has not mitigated the concern that he misled the contractor's psychologist in December 2002 regarding his personal use of the corporate card and the concern that he has not been candid with DOE security personnel concerning his use of an escort service in February 2002. Accordingly, I cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the

individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: August 26, 2005